

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

KAREN A. RITTINGER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:15-cv-01548-CAS
	)	
HEALTHY ALLIANCE INSURANCE	)	
COMPANY, <sup>1</sup> d/b/a ANTHEM BLUE	)	
CROSS AND BLUE SHIELD, and	)	
ANTHEM UM SERVICES, INC.,	)	
	)	
Defendants.	)	

**DEFENDANTS’ OPPOSITION TO PLAINTIFF’S  
MOTION TO STAY BRIEFING ON DEFENDANTS’ MOTION TO DISMISS**

In her Request for Extension of Time to Respond to Defendants’ Motion to Dismiss and/or Stay Briefing Thereon (the “Motion”), Plaintiff requests that her deadline for responding to Defendants’ Motion to Dismiss either be stayed until resolution of Plaintiff’s anticipated motion to remand, which Plaintiff states she need not file until November 9, 2015, or, alternatively, be extended some amount of time beyond November 9, 2015. Plaintiff’s counsel did not contact Defendants’ counsel prior to filing the instant Motion. As such, receipt of the instant Motion is the first occasion Defendants’ counsel had to learn of Plaintiff’s desire to amend the deadlines for responding to Defendants’ Motion to Dismiss.

In any event, Defendants do not object to Plaintiff’s request for additional time beyond November 9, 2015 in which to file a response to Defendants’ Motion to Dismiss. Defendants

---

<sup>1</sup> As noted in Defendants’ Notice of Removal, at times in her Complaint, Plaintiff incorrectly identifies Healthy Alliance Life Insurance Company as “Healthy Alliance Insurance Company.” (See Notice of Removal, p. 1 n.1 and Complaint, attached as part of Exhibit 1 to Defendants’ Notice of Removal, at Caption and ¶ 41.) In her Request for Extension of Time to Respond to Defendants’ Motion to Dismiss and/or Stay Briefing Thereon (Doc. No. 13), Plaintiff correctly identifies Healthy Alliance Life Insurance Company in her caption.

would be agreeable to, for example, a ten (10) day extension, up to and including November 19, 2015, in which Plaintiff could respond to Defendants' Motion to Dismiss.

Defendants do, however, object to Plaintiff's alternative request to entirely stay briefing on (and resolution of) Defendants' Motion to Dismiss on the basis of an anticipated motion to remand, which may be filed. Aside from Plaintiff's motion to remand not yet being filed, Plaintiff's own Motion states that the arguments contained in the briefing on Plaintiff's motion to remand will be intertwined with the arguments in Defendants' Motion to Dismiss. Further, staying briefing on and resolution of Defendants' Motion to Dismiss for several weeks, if not several months, will unduly delay this matter, particularly in the event Defendants prevail on a motion to remand and on their Motion to Dismiss, which would likely result in Plaintiff re-pleading her claims. Despite Plaintiff's suggestion to the contrary (Motion, ¶ 10), Defendants do not desire to unduly and unnecessarily prolong litigation of this matter. Further, Plaintiff's contention that responding to Defendants' Motion to Dismiss would result in her "conced[ing] to this Court's jurisdiction" is inaccurate (*id.*, ¶9); subject matter jurisdiction cannot be conferred upon the Court by waiver of the parties. *See, e.g., Franklin v. Pinnacle Entm't, Inc.*, No. 4:12-CV-307 CAS, 2012 WL 1280272, at \*2 (E.D. Mo. Apr. 16, 2012) ("[P]laintiffs' anticipated motion to remand concerns the existence of subject matter jurisdiction, which cannot be waived. Therefore, plaintiffs' motion to remand is not mooted or waived by the filing of the Amended Petition." (internal citation omitted)).

In sum, Defendants do not oppose Plaintiff's request for additional time, even up to November 19, 2015, in which to respond to Defendants' Motion to Dismiss. Defendants do, however, oppose Plaintiff's request to entirely stay briefing on (and resolution of) Defendants'

Motion to Dismiss pending the filing of, briefing on, and resolution of Plaintiff's anticipated motion to remand.

Dated: October 21, 2015

Respectfully submitted,

/s/ David W. Gearhart

Neal F. Perryman, 43057MO  
David W. Gearhart, 50292MO  
LEWIS RICE LLC  
600 Washington Avenue  
Suite 2500  
St. Louis, Missouri 63101-1311  
314.444.7661 (direct)  
314.612.7661 (fax)

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 21, 2015, a copy of the above and foregoing was served via the Court's electronic filing system to the following counsel of record for Plaintiffs:

Daniel F. Harvath  
**THE DANIEL HARVATH LAW FIRM, LLC**  
P.O. Box 440393  
St. Louis, Missouri 63144  
dharvath@dhlawfirmllc.com

*Attorneys for Plaintiff Karen A. Rittinger*

/s/ David W. Gearhart